

2023

NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT INAUGURAL ENFORCEMENT REPORT

INNOVATION

ACCESS

OPPORTUNITY

SAFETY

EDUCATION

EQUITY &
INCLUSION



Table of Contents

Table of Contents	i
A Letter from the Director of Enforcement	ii
Introduction	1
New Legislative Authority	1
By the Numbers.....	2
Agency & Local Government Partners	2
Staffing.....	3
Conclusion.....	3



A Letter from the Director of Enforcement

Dear Governor Hochul, Leader Stewart-Cousins, Speaker Heastie, and all New Yorkers,

We are pleased to present the Office of Cannabis Management (OCM) 2023 Enforcement Report as mandated by Cannabis Law Article 2, S.11(15). The report presents the work of the OCM Enforcement Division over the past year as we took actions against unlicensed, illegal cannabis retail locations.

As you are aware, in early 2023, new legislation was proposed to grant authority of OCM and Department of Taxation and Finance (DTF) to act against unlicensed cannabis retailers. This legislation was signed into law by Governor Hochul in May 2023. The first week of June, we conducted our first regulatory inspections at unlicensed cannabis retail locations. Since then, we have conducted more than 350 inspections resulting in seizures of illicit cannabis and cannabis products valued at more than \$55,000,000.

In April 2023, civil service offered the first test for Investigative Specialist 1 (Cannabis). These test results generate the eligibility list used in the hiring of our investigators, making it easier for my team to staff up to full capacity. We have kept enforcement hiring at the top of our OCM priority list so we can effectively staff the division to meet operational needs.

We are pleased to report that 2023 also saw the first closure orders issued from county supreme courts. These orders allow us to physically padlock and shutter illegal cannabis retail locations. We continue these efforts, alongside the NYS Attorney General's Office, to secure more closure orders in furtherance of our mission.

Enclosed with this letter and as required by Cannabis Law, this annual report has been submitted to you and to the majority leader of the New York State Senate and the speaker of the New York State Assembly. This report is available to the public via the at <https://cannabis.ny.gov/reports>.

Sincerely,

Daniel Haughney
Director of Enforcement
New York State Office of Cannabis Management

Introduction

Pursuant to Article 2, Section 11(15) of the Cannabis Law, the Office shall report annually on the enforcement actions taken under this chapter and the enforcement actions taken by the Department of Taxation and Finance (DTF), including the information required to be provided in section four hundred ninety-six-e of the Tax Law. This report includes such information along with other important information related to cannabis enforcement in 2023.

Enforcement staff investigate complaints about cannabis-related activities, involving either licensees or unlicensed entities, and, if appropriate, take enforcement action. Prior to the enactment of legislation in May of 2023, the Office's authority to enforce against unlicensed cannabis business activity was limited. Since those legislative changes, the Office and DTF have been able to significantly increase efforts to combat the illicit cannabis market in New York state.

New Legislative Authority

New enforcement legislation signed in May 2023 provided enforcement power to the Office and DTF to enforce against unlicensed businesses, close stores engaged in the illegal sale of cannabis, and increase civil and tax penalties for those violations up to \$20,000 per day. Specifically, the revisions to the law:

- Empowered the Office to take enforcement actions against businesses selling cannabis without the required license, including so-called "sticker shops" and other similar unlicensed businesses selling cannabis;
- Bolstered the enforcement authority of the Office, allowing it to conduct regulatory inspections of all businesses selling and giving away cannabis, including selling and giving away cannabis in indirect ways, and to inspect these businesses by using a court order if the businesses do not allow the Office to conduct an inspection;
- Empowered the Office to seize cannabis found in unlicensed cannabis businesses;
- Empowered the Office to seek court-ordered injunctions, closing orders, and the removal of commercial tenants to ensure unlicensed cannabis businesses cannot continue operating in violation of state law, and to incentivize landlords to make sure that their tenants are acting in compliance with the state law;
- Directed the Office to continue its work informing the public of the risks of patronizing unlicensed cannabis businesses, and to encourage cannabis consumers to instead patronize the State's growing legal market;
- Established that selling cannabis and cannabis products without a license is a class A misdemeanor;
- Empowered DTF to conduct regulatory inspections of businesses selling cannabis to determine if the appropriate taxes have been paid, and to issue fines and penalties when they have not;
- Established a new tax fraud crime for when a cannabis business willfully fails to collect or remit required cannabis taxes, or knowingly possesses for sale any cannabis on which tax was required to be paid but was not paid; and
- Provided for commencement of removal of commercial tenants for unlicensed cannabis retail sale under the Real Property Actions and Proceedings Law.

By the Numbers

During the period of October 1, 2022, to June 5, 2023, prior to implementation of the 2023 enforcement legislation, the Office received 1,275 complaints, which resulted in more than 200 cease and desist letters. Following the enactment of the new enforcement legislation, the Office implemented a new operational model of enforcement in June of 2023. As of December 15, 2023, OCM Enforcement, working together with DTF Investigations Division, had conducted over 369 inspections, including 103 re-inspections of locations believed to be selling cannabis without the required license. As a result of these inspections, 305 notices of violation/ orders to cease were issued and over 11,600 pounds of illicit products with an estimated street value of \$55 million were seized. As of December 15, 2023, \$1,312,500 in fines had been levied against unlicensed operators following decisions issued through the administrative hearing process.

In Fall 2023, the Office implemented an application to better track enforcement efforts from issuance of the notice of violation through to administrative hearings. Beginning with this report, the Office is required to submit a report about the enforcement actions taken by the Office and DTF to the Legislature on January 1, 2024, and annually thereafter, and to post the report publicly on its website.

Agency & Local Government Partners

Local and State law enforcement agencies, including local police and sheriff departments, as well as the Attorney General's Office, are critical partners in interacting with unlicensed businesses and ending their illegal operations, which can pose a risk to public health and safety. The Office coordinates with these agencies when conducting inspections, and routinely has uniformed officers or deputies on scene outside the locations while enforcement inspections are underway. The Office and DTF began their first joint inspections authorized by the May 2023 enforcement legislation on June 6-7, 2023 in New York City with the inspection of 11 retail dispensaries. Inspections have since remained active and ongoing. Whenever a business is found to be selling cannabis without a license, the Office issues a Notice of Violation and Order to Cease Unlicensed Activity.

The Office and DTF have continued an aggressive schedule implementing their new enforcement authority against unlicensed cannabis retail operations. By the end of 2023, inspections had been conducted in all regions of New York: Western (Buffalo/ Niagara); Central (Rochester, Syracuse, Utica, Ithaca); Southern Tier; Capital Region; North Country; Lower Hudson Valley; New York City; and Long Island. In addition to the initial inspections carried out as described above, the Office and DTF conducted re-inspections of locations that had been issued notices of violations during their initial inspection. These re-inspections occur to determine if the location is continuing to operate in defiance of a cease order or if they have in fact ceased their illegal conduct. Those locations found to be operating contrary to the original cease order are identified so that higher level fines can be assessed.

In 2023, the Office, working with the Office of the Attorney General, was also successful in obtaining injunctive relief in three actions filed pursuant to Section 16-a, a new section of the Cannabis Law that authorizes a Supreme Court to grant emergency injunctive relief and padlock unlicensed cannabis retail locations and/or enjoin egregious unlicensed business activity. In each case, the Office requested and received an emergency padlock order from the Supreme Court,

enabling the Office to shut down a total of 8 persistently non-compliant unlicensed cannabis retail locations.

The first case shut down an unlicensed business operating out of eight locations across Wayne, Cayuga, and Oswego Counties. Each location was found to be operating in clear violation of a previous cease order issued by the Office's Enforcement Team and the Office was able to obtain restraining orders and closure orders from the Wayne County Supreme Court. These orders allowed the Office to physically padlock the locations and shut them down. These closure actions were a perfect example of the growing state and local partnerships that have been developing across the state in the area of enforcement of unlicensed cannabis retail activity. For example, the Wayne County Sheriff's Office was instrumental in the safe completion of the Office's inspections and assisted greatly in identifying the locations which were operating in defiance of our cease orders. When the closing orders were obtained, the Sheriff again made deputies available to assist in the execution of the orders.

Since this first successful case, the Office has continued to work with the NYS Attorney General's Office on these important emergency relief actions and has secured additional restraining orders and closure orders for illicit operators in Ontario and Kings Counties. As in the first case, the owners of these locations continued to operate in defiance of numerous orders to cease illegal operations, which had been issued by Office Investigators during regulatory inspections.

Staffing

To continue expanding enforcement efforts, building the capacity of the Enforcement team continues to be a high priority of the Office. The first civil service test for Cannabis Enforcement Investigators was administered in April 2023. The Office has since recruited investigators using the established hiring list generated from the civil service test. The civil service test is just the first step in the investigator hiring process. Once investigator candidates are identified through the test results, they must pass a physical, an agility test, a psychological test, and a thorough background investigation before being offered a position.

Conclusion

By taking decisive action against unlicensed cannabis businesses, New York State is making significant strides towards shutting down unlawful and unlicensed cannabis operations that jeopardize public safety, consumer well-being, and the integrity of the State's legal cannabis market.